

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, *et al.*,

Plaintiffs,

v.

Varsity Brands, LLC, *et al.*,

Defendants.

Civ. Action No. 2:20-cv-02892

**DEFENDANTS' MOTION TO EXCEED PAGE LIMITATIONS IN BRIEFING
DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF PLAINTIFFS'
PROFFERED EXPERT RANDAL HEEB, PH.D. AND REQUEST FOR EXPEDITED
BRIEFING**

Defendants respectfully move the Court under Local Rule 7.2 for leave to file excess pages in support of Defendants' forthcoming Motion to Exclude Testimony of Plaintiffs' Proffered Expert Randal Heeb, Ph.D. Defendants request leave to file an opening brief of no more than thirty pages in support of their motion. In light of the February 10, 2023, *Daubert* motion deadline, Defendants also request that the Court set an expedited briefing schedule making Plaintiffs' response to this motion due Wednesday, February 8, 2023.

Dr. Heeb submitted two expert reports in this matter that include a combined total of more than four-hundred and fifty pages of material and over 1,000 footnotes. Dr. Heeb opines about multiple key issues, including three different alleged markets, class definitions, alleged anticompetitive conduct, and damages. Dr. Heeb purports to offer a calculation of damages based on common evidence. Defendants seek to exclude many of these opinions on multiple grounds.

Although Defendants aim for concision in briefing, to adequately address the many issues raised by Dr. Heeb's lengthy expert reports and deposition testimony, Defendants require

additional pages. Moreover, Defendants' motion to exclude Dr. Heeb's testimony will be a single joint motion briefed by all Defendants, which further supports the extension requested here. Given that this is a complex matter and Dr. Heeb has offered two lengthy reports, Defendants are unable to adequately address Dr. Heeb's opinions in under twenty pages, as required by Local Rule 7.2. Defendants respectfully request leave to file ten additional pages in support of their Motion, bringing the page total to no more than thirty.

Given the February 10, 2023, deadline to file *Daubert* motions, Defendants also request that the Court order expedited briefing and set February 8, 2023, as Plaintiffs' deadline to respond to this motion. Defendants initially reached out to Plaintiffs regarding the relief sought in this motion on January 27, 2023. Plaintiffs indicated that they would not oppose this motion on condition that Defendants agree not to oppose a request for a similar extension for Plaintiffs' response. On February 3, 2023, however, Plaintiffs stated that after further consideration, they believed Defendants' request for additional pages was unnecessary. In light of this disagreement, and to provide sufficient time for the Court to address this issue before the February 10 deadline, Defendants now file this motion and request that the Court order Plaintiffs to file any response by February 8, 2023.

For these reasons, Defendants respectfully request that the Court set February 8, 2023, as Plaintiffs' deadline to respond to this motion and, following briefing, enter an order granting this motion and allowing Defendants to file up to ten additional pages in support of their motion to exclude Dr. Heeb's expert testimony under Federal Rule of Evidence 702.

Dated: February 3, 2023

Respectfully submitted,

s/ Matthew S. Mulqueen

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CERTIFICATE OF CONSULTATION

I hereby certify that undersigned counsel, on behalf of all Defendants, initially raised Defendants' intent to seek the relief set out in this motion via email with Counsel for Plaintiffs on January 27, 2023. Following discussion of the issue, Defendants understood that Plaintiffs

would not oppose the relief sought on condition that Defendants not oppose a similar extension request as to Plaintiffs' response brief. On the morning of February 3, 2023, Defendants informed Plaintiffs they would be filing the motion that afternoon. On the afternoon of February 3, 2023, counsel for Plaintiffs stated that upon further consideration, Defendants' request appeared unnecessary. Counsel for Defendants provided further explanation for the requested extension and stated that absent response from Plaintiffs by 5:00 p.m., Defendants would file this motion, would note Plaintiffs' opposition, and would request expedited briefing. Plaintiffs did not provide further response. Counsel for Defendants also attempted to reach Plaintiffs' counsel by telephone prior to filing and was unable to do so.

s/ Matthew S. Mulqueen